# ARTHUR KILL CORRECTIONAL FACILITY: REDEVELOPMENT

**RELEASE DATE:** Friday, June 22, 2012
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Empire State Development

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## I. INTRODUCTION

New York State Urban Development Corporation d/b/a Empire State Development ("ESD") is seeking proposals for the acquisition and redevelopment of the former Arthur Kill Correctional Facility, located at 2911 Arthur Kill Road, in the Rossville section of Staten Island, New York, ("the Site").

The Site is approximately 69 acres of waterfront land along Staten Island's West Shore. The surrounding properties are utilized for a variety of commercial, recreational, open space and industrial purposes. The Arthur Kill Correction Facility was closed in 2011 and will be available for disposition in late 2012.

Each party submitting a response to this RFP ("Proposal") is referred to herein as a ("Respondent") and the Respondent that is ultimately selected through this RFP process is referred to herein as the ("Selected Developer").

Respondents to this Request for Proposals ("RFP") should propose commercial and light industrial uses; residential uses will not be considered. Redevelopment of the Site is a unique opportunity to leverage underutilized State assets with the support of the local community.

## II. SITE CONTEXT AND DESCRIPTION

STATEN ISLAND WATERFRONT

Independent of the closure of the Arthur Kill Correctional Facility, the New York City Department of City Planning and NYC Economic Development Corporation (NYCEDC) released a land use and transportation report (the "Report") entitled "*Working West Shore 2030 – Creating Jobs, Improving Infrastructure and Managing Growth*", in June 2011. This Report and the accompanying "West Shore 2030 Work Plan" are guiding documents, providing a framework for future public and private investment and land use decisions. They are the product of a collaborative effort the City, local civic groups and Staten Island's elected officials.

The Report provides recommendations for areas where targeted infrastructure improvements can support future job creation. The Arthur Kill Correctional Facility is located within the area identified as the Rossville Waterfront, an area which supports a mix of maritime, light industrial, commercial and destination retail uses. Redevelopment of the Site is an integral part of this effort to spur economic development and potentially forge strong connections to the waterfront.

In support of the Report, NYCEDC also released a Request for Expression of Interest for an adjacent 33 acre site, the Rossville Municipal site, in November 2011. Because of the Rossville Municipal site's 2,000 linear feet of shoreline and New York City's initiatives to strengthen the industrial and maritime sectors, responses for this request were to include the activation of at least a portion of the Rossville Municipal site for port uses.

Additionally, NYC Department of Transportation, in conjunction with NYC Department of Design and Construction, are completing a traffic study and preliminary schematic design for the recommended widening of Arthur Kill Road, from Richmond Avenue to the Outerbridge Crossing. The study area includes the street frontage of the Site.

OVERVIEW OF THE ARTHUR KILL CORRECTIONAL FACILITY

The Arthur Kill Correctional Facility was recently closed by the New York State Department of Corrections and Community Supervision (DOCCS). The Site was acquired by the State of New York in 1967 for mental hygiene purposes but has been used since 1976 as a correctional facility. There are 43 buildings situated on approximately 69 acres of land. In addition to the 69 acres, there are approximately 12.5 acres of predominantly wetlands or lands underwater along the Arthur Kill, which will not be available for lease or sale, but access to the Arthur Kill from the Site may be preserved through license or agreement.

Please note that the Arthur Kill Correctional Facility is one of seven recently closed correctional facilities included within the State's Economic Transformation Program and that grants for capital purposes and tax credits may be available for projects that create jobs on the Site. For more information on the Economic Transformation Program, please go to: http://www.esd.ny.gov/BusinessPrograms/EconomicTransformation.html.

**Location and Transportation**

The Site is located along the Arthur Kill on the southwesterly side of Staten Island at 2911 Arthur Kill Road. The Site is bounded on the north by the Arthur Kill, on the south by Arthur Kill Road, on the east by commercial, recreational, and open space uses and on the west by Industrial Loop, a private road with a mix of light and heavy industrial uses. The Site is identified as Lot 1, Block 7178 on the New York City Tax Maps and is located in Staten Island Community District #3. On the south side of Arthur Kill Road is the Clay Pit Ponds State Park. The Site is within a ½ mile from Exit 3 of the West Shore Expressway and within 3 ½ miles of the Outerbridge Crossing providing access to New Jersey. Bus service is accessible via Arthur Kill Road.

**Zoning**

The entire Site is located in an M3 District, which accommodates heavy industrial uses, but also permits light industrial and many commercial uses. The Site is also located within the Special South Richmond Development District (ZR 107-00), a NYC zoning designation, that provides additional rules to guide future development and infrastructure planning on the south shore of Staten Island. Proposed redevelopment scenarios need not be compliant under existing zoning. Proposals that require further actions such as zoning modifications will be considered, insofar as they are justified by the Development Goals section of this RFP.

A Proposal that requires a variance from as-of-right City zoning regulations will also be subject to the New York City Charter's Uniform Land Use Review Procedure (ULURP). The Selected

Respondent will be responsible for the preparation of, and all cost associated with, the ULURP application.

**Building and Site Data**

The 43 buildings on the Site, most built since 1976, include 8 barracks-style housing units, kitchen/mess hall, administration building, maintenance garage, guard towers, storage warehouse, infirmary, sewage pumping station and a gymnasium. The primary buildings on the Site comprise approximately 341,330 square feet. A large parking lot for 600+ vehicles is located near the entrance to the facility. Outdoor recreational facilities are located in the rear (northerly) end of the grounds. All buildings and mechanical equipment are in good condition and were in use until December 1, 2011. For additional information, please refer to the Arthur Kill Correctional Facility Key Plot Plan in the Appendix of this RFP.

**Water Distribution System**

The Arthur Kill Correctional Facility is served by a buried cast iron water main that enters the facility and is distributed to the other buildings in the Site. The system includes all fire hydrants on the Site which provides fire protection to all buildings.

**Sanitary Sewer System**

The Arthur Kill Correctional Facility is served by underground sanitary sewer piping and manholes located throughout the Site. Also included are several grease traps. Sewage is collected in an equalization tank located on the Site, and is pumped to a NYSDEC permitted wastewater treatment facility via a 2 ½ inch forced main. After adequate treatment, the effluent from the wastewater treatment plant is discharged to drying/filter beds.

**Sanitary Sewer Discharge**

Arthur Kill Correctional Facility discharges its sanitary sewage to the city of New York Publically Owned Treatment Works (POTW) for treatment.

**Storm Water System**

The Arthur Kill Correctional Facility is served by underground storm sewer piping, manholes and area drainage catch basins located throughout the Site. Arthur Kill Correctional Facility falls under the regulatory requirements of the DEC Municipal Separate Storm Sewer System (MS4,) for storm water management (General Permit #GP02-10-002, MS4 ID #NYR-20A-502). A storm water construction permit remains open for the recent firing range construction project at the Site(DEC Permit #NYR-10M260.)

**Electrical Distribution**

Electric service for the Site is provided by Con Edison. Power is distributed throughout the Site through underground conduits and duct banks. The power is distributed at 4160 volts, three phase. The main disconnect switchgear is located outside the secured perimeter and is located at the south west corner of the Site parking area. The secondary voltage of the majority of the main buildings is 208 volts, which is converted by a pad mount transformer and distributed to the various areas.

**Petroleum Bulk Storage**
The Site has ten petroleum bulk storage tanks that are registered with the Department of Environmental Conservation. Four of these tanks are above ground tanks. The underground tanks consist of two 25,000 gallon #2 fuel oil tanks, a 1,000 and 2,000 gallon gasoline and diesel vehicle fueling tank, and an 1,000 and 8,000 gallon generator diesel tank.

**Air Permitting**
Arthur Kill Correctional Facility operates under a DEC Air State Facility Permit (#2-6405-00235/02001). Two new chillers and three new powerhouse boilers were recently installed. There is also one 1500kw emergency generator. In addition to these large emissions points, exempt and trivial activity sources of emissions include small combustion sources, storage tanks, exempt generators and maintenance and vocational activities. This emission source is registered with the DEC and certain regulatory requirements are mandated.

**Range Remediation**
Arthur Kill Correctional Facility has a decommissioned firing range and a recently active firing range with a state of the art lead trap system. The decommissioned firing range had been slated for lead remediation. DOCCS, NYS Office of General Services ("OGS"), and NYS Department of Environmental Conservation are currently evaluating lead remediation options for the decommissioned firing range.

**Ownership and Taxes**
The Site is currently owned by the State of New York and is exempt from property taxes. Assuming a private reuse of the Site, property taxes would be assessed by the NYC Department of Finance. More information on NYC property taxes and the NYC Department of Finance can be found at www.nyc.gov/dof.

## III. DEVELOPMENT GOALS

ESD invites Respondents to offer development proposals to maximize the financial return to the government and taxpayers through reuse and redevelopment of the Site that is compatible with the surrounding current and planned uses of the West Shore of Staten Island and should contribute to the resurgence of the Rossville community.

Consistent with the Report, the following uses are encouraged:

- Destination retail;
- Maritime and light-industrial development; and
- Other redevelopment projects that maximize the creation of jobs.

The Report does not consider residential use in the Rossville Waterfront section of Staten Island.

A development proposal does not need to be compliant under existing zoning. However, as stated above, a Proposal that requires a variance from as-of-right City zoning regulations will also be subject to the New York City Charter's Uniform Land Use Review Procedure (ULURP). The Selected Respondent will be responsible for the preparation of, and all cost associated with, the ULURP application.

**Transaction Structure/ESD Statutory Authority**

ESD has specific statutory authority under various State laws to create and utilize alternative transactional structures which might facilitate the application of other benefits. Respondents may submit an alternate transactional structure for review, but every submission must include a proposal for acquisition of fee simple title to the Site. No assurance can be provided that any other transaction structure will be offered or considered by ESD under this RFP.

ESD does not anticipate providing project financing or Government guarantees of third-party financing. However, other Government incentives may be considered, including through the Economic Transformation Program.

## IV. PROPOSAL REQUIREMENTS

Respondent's financial offer for the Site should assume that it will be disposed of in as-is condition. Each complete Proposal for the redeveloped Site (the "Project") must contain the following elements:

1. **Purchase Price**
   The proposed purchase must be expressed in a fixed, non-contingent dollar amount. The purchase price will be paid in full at closing.

2. **Project Description**
   The Project description should include a detailed narrative describing relevant aspects of the Project, including type and size of the development, proposed uses, type and number of commercial tenants, employment generation projections, a list of potential tenants for the proposed Project along with letters of interest and/or intent from tenants. The Project description should also address ESD's objectives for this Site:
   - Maximize financial return to the government and taxpayers through reuse and redevelopment of the Site that is compatible with the surrounding current and planned uses.
   - Contribute to the resurgence of the Rossville community of Staten Island.

3. **Financial Information**
   Respondent must submit the following:
   - Pro forma cash flows, in hard copy and in Excel format on computer disk for the development and Project operation periods, including details of any as-of-right or discretionary real estate tax, other tax, energy or other governmental benefits

assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should extend out to twenty (20) years of operations from stabilization and include all necessary capital investments over time and reserves and debt service payments associated with the financings.

- Construction sources, budget, and uses of funds, including details of equity and financing sources and a break out of all soft and hard costs and development and financing fees. Indicate escalation rates to account for any increases in construction costs in your budget or contingences.
- Permanent sources and uses of funds, including details of equity and financing sources and all development fees and financing fees to be paid.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.

**4. Respondent Description**

Each entity submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which can be accessed at: http://www.osc.state.ny.us/vendrep/

Each Proposal must include a description of the management and/or development team, including:

- The intended form and structure of any proposed partnership or joint venture must be clearly explained and a chart/diagram of the purchaser and/or development entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, telephone number and qualifications of each member of the development team, including all persons or entities that will design, develop, or operate the Project, as well as the lawyer and other professionals, as appropriate, who will be involved with this Project. Respondents must provide the Federal EIN numbers of the development entity.
- Background information on all members of the Respondent's team, including the relevant experience of all principal members thereof and their availability for commitment to the Project. This information must be submitted for every participant in a joint venture.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- Any additional documentation or information evidencing the strength or the Respondent's team and its ability to complete the Project in a timely manner.

**5. Site Plan and Architectural Design**

Respondent shall provide schematic drawings for the proposed development including site use plans, floor plans, renderings of the buildings, and a summary of the proposed building program with all square footages identified. Drawings must include the graphic

scale. The site plan should consider compatibility with surrounding uses.

6. **Zoning Calculation**
   Respondent must submit a preliminary zoning analysis showing all calculations, including proposed use groups, required and proposed parking. Respondent should identify all necessary required permits and authorizations.

7. **Implementation Plan and Schedule**
   Respondent shall provide an overview of how the principal spaces, systems and building elements would be modified, reused or demolished. Proposal should outline all necessary development or modifications needed for the purchase of the property in its "as-is" condition and include an estimated schedule, budget and funding sources.

8. **Development Timeframe**
   Respondent must submit an overview of the development timeframe (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones including commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization.

9. **M/WBE Goals (see Attachment A)**

## V. SELECTION CRITERIA

ESD will use the following criteria to review submissions and select a Proposal:

- *Economic Impact on West Shore Staten Island*: Projected expenditures, including purchase price, construction costs and annual operating costs and retail spending.
- *Financial Feasibility*: Respondent's demonstrated financial condition to complete the Project; availability of identifiable funding sources to finance the Project; sufficient revenue to support operating revenues, scheduled payments related to capital costs, reserve fund contributors and debt service.
- *Purchase Price:* Provide a competitive price for the purchase of the Site.
- *Land Use and Design*: Thoughtful and innovative architectural and urban design; extent to which the development potential for the Site is maximized in a manner consistent with applicable zoning, environmental and other regulatory controls and relates to the surrounding community.
- *Development Team Qualifications*: Experience, development skills, and financial resources necessary to complete a high-quality Project on time and within budget.
- *Adherence to Development Goals and "Working West Shore Plan":*
- *Employment Impact*: Creation of incremental (construction) and permanent on-site employment and payroll.
- *Schedule and Timing:* Proven ability to complete the Project in a timely manner.

## VI. DEVELOPER DUE DILIGENCE

**"As-Is" Condition**

Respondents should assume that the Arthur Kill Correctional Facility, including supporting building infrastructure, will be leased/sold "AS IS" and "WHERE IS" without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent's purpose.

ESD will post all relevant information on the RFP website, including individual building descriptions, tax maps, and land survey. Phase 1 Environmental review is available upon request to ArthurKillRFP@esd.ny.gov.

Respondents, though, should rely on their own independent research and conclusions for all development, financing, construction and renovation costs.

## VII. DISPOSITION PROCESS

After a review of the Proposals, ESD intends to select one of the responses and the Developer will enter upon a contract of sale with ESD. The sale of the Site will be subject to the property disposition rules of the Public Authorities Accountability Act.

## VIII. SUBMISSIONS

Five (5) hard copies and one (1) electronic version of the Proposal identified by "Arthur Kill RFP" on the envelope must be submitted and received by ESD by August 17, 2012 at 2:00 pm. Such Proposals must be delivered to the following address:

Empire State Development
633 Third Avenue, 37th Floor
New York, NY 10017
Attn: Gretchen Minneman

## IX. STATEMENT OF LIMITATIONS

1. ESD represents that this RFP, submissions from Respondents to this RFP, and any relationship between ESD and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts ESD's rights as set forth in the RFP, including this Statement of Limitations.

2. The issuance of this RFP and the submission of a response by any firm or the acceptance of such response by ESD does not obligate ESD in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by the ESD and the firm(s) selected by the ESD.

   ESD reserves the right (i) to amend, modify, or withdraw this RFP, (ii) to revise any requirements of this RFP, (iii) to require supplemental statements or information from any responding party, (iv) to accept or reject any or all responses thereto, (v) to extend the deadline for submission of responses thereto, (vi) to negotiate or hold discussions with any respondent and to correct deficient responses which do not completely conform to the instructions contained herein, and (vii) to cancel, in whole or part, this RFP, if ESD deems it in its best interest to do so. ESD may exercise the foregoing rights at any time without notice and without liability to any respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of the responding party.

3. All information submitted in response to this RFP is subject to the Freedom of Information Law (FOIL), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure.

4. ESD reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP responses, including late responses, in its planning efforts. ESD reserves the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFP.

5. This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the RFP. ESD will not be responsible for any costs incurred by Respondents related to preparing and submitting a response to this RFP, attending oral presentations, or for any other associated costs.

6. To the best of ESD's knowledge, the information provided herein is accurate.

Respondents should undertake appropriate investigation in preparation of responses. A site inspection will be coordinated to give all Respondents the opportunity to examine existing conditions.

## X. ADDITIONAL INFORMATION

**Project Inquiries**

ESD will accept written questions via email from prospective Respondents regarding the RFP. Please submit questions to:

ArthurKillRFP@esd.ny.gov

Written questions must include the requestor's name, e-mail address, and the Respondent represented. All written questions must be received by August 1, 2012. A response to all appropriate questions will be posted on the ESD website:
http://www.esd.ny.gov/CorporateInformation/RFPs.html

**Site Visits**

Potential Respondents may attend a site tour with ESD staff on July 11, 2012 at 10:00 am. Please email ArthurKillRFP@esd.ny.gov by July 9, 2012, if you plan on participating in the site tour.

## XI. PROJECT TIMELINE

- RFP Release: June 22, 2012
- Site Visit: July 11, 2012
- Final Question Due Date: August 1, 2012
- ESD Responds to Questions: August 8, 2012
- RFP Responses Due: August 17, 2012

## XII. PROCUREMENT AND TAX LAW REQUIREMENTS

### State Tax Law Section 5-a.

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESDC from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over $300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all respondents to this solicitation must include in their responses a properly completed Form ST-220-CA, or an affidavit that the respondent is not required to be registered with the State Department of Taxation and Finance. A copy of the ST-220-CA form and affidavit is accessible at the Required Forms for Vendors link at the ESDC web site:** http://esd.ny.gov/CorporateInformation/RFPs.html

Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

### State Finance Law Sections 139-j and 139-k

state Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that (x) all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed below; (y) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and (z) periodic updating of such forms during the term of any contract resulting from this RFP. **Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law as part of their submittal.**

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

http://esd.ny.gov/CorporateInformation/RFPs.html (under "ESDC Policy Regarding Permissible Contacts under SFL 139").

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and the sub-consultants complete the forms required above.

### Vendor Responsibility

**ESD encourages vendors to register in the State's Vendor Responsibility System (VendRep System).** The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at https://portal.osc.state.ny.us. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company's trade industry.

## XIII. INSURANCE REQUIREMENTS

The selected contractor will be expected to comply with ESD's insurance requirements, as listed below.

A. Commercial General Liability insurance - $1 million per occurrence / $2 million aggregate.

B. Auto Liability insurance - $1 million per occurrence / $1 million aggregate

C. Excess Umbrella Liability insurance - $1 million per occurrence / $ 1 million aggregate minimum

D. Professional Liability insurance - $1 million minimum (preferably $5 million)

E. Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits.

F. Must show evidence of Disability insurance coverage at State statutory limits.

G. The NYS Urban Development Corporation d/b/a Empire State Development must be named as an additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Liability policies

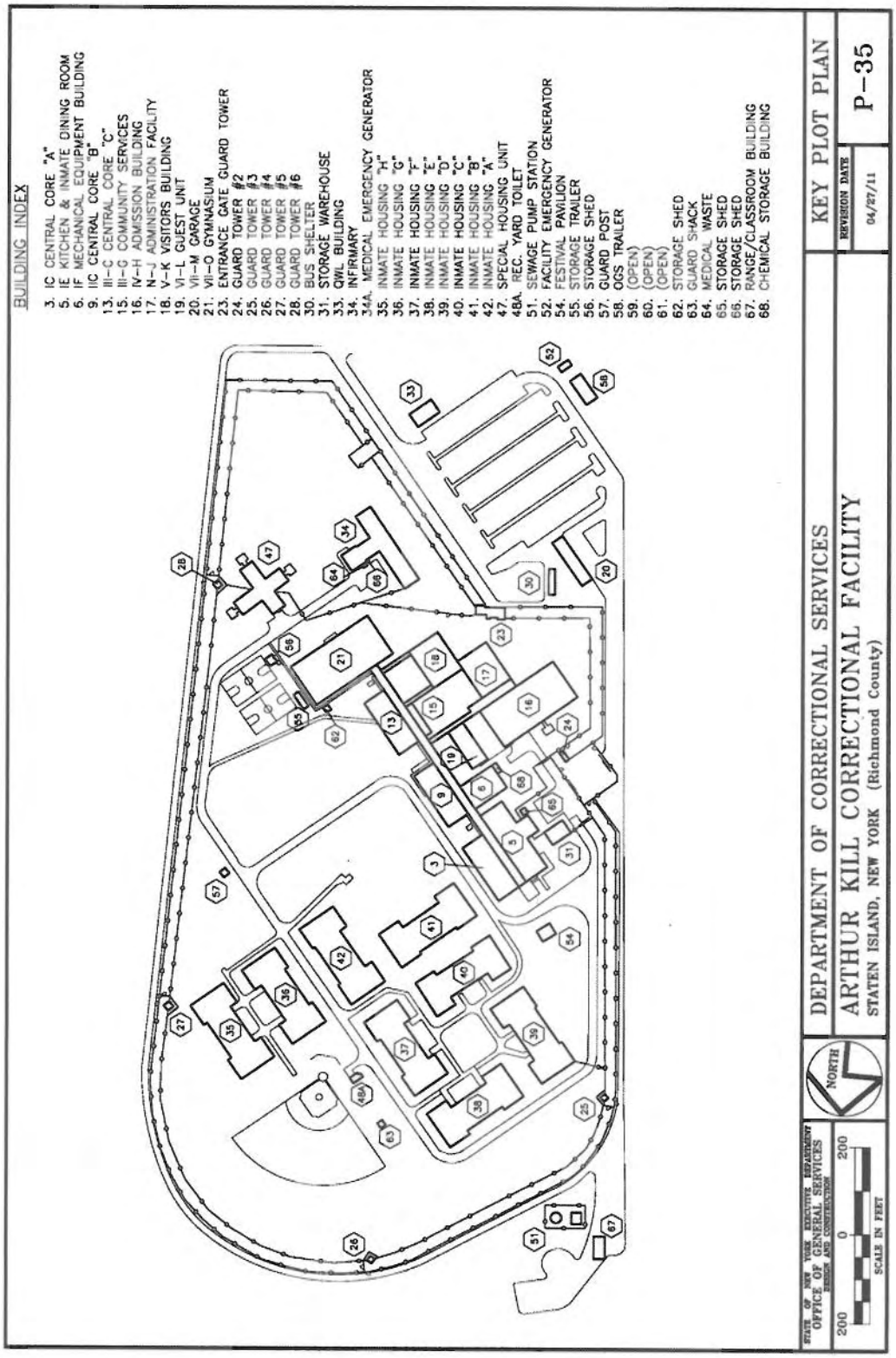
H. All policies above should include a waiver of subrogation in favor of the NYS UDC d/b/a ESD.

## XIV. PENDING LITIGATION

On July 18, 2011, a lawsuit was filed in federal court by eight Arthur Kill correction officers, alleging that the closing of Arthur Kill discriminates against minority correction officers. Plaintiffs simultaneously

applied for a temporary restraining order ("TRO") to block the closing of Arthur Kill. See Nunez v. Cuomo, 11-Civ-3457, U.S.D.C., EDNY. Plaintiffs' application for a TRO was denied by the Court on August 24, 2011, and the facility was closed on December 1, 2011. The defendants have moved to dismiss the lawsuit, which seeks monetary damages against New York State and Governor Cuomo and requests injunctive relief, including the reopening of the facility.

## ARTHUR KILL CORRECTIONAL FACILITY KEY PLOT PLAN



## ATTACHMENT A

## CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

### NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

### Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 20% for MWBE participation. A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that ESD may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: http://esd.ny.gov/MWBE.html.

For guidance on how ESD will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the

Contract, such finding constitutes a breach of Contract and ESD may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder/") agrees to submit the following documents and information as evidence of compliance with the foregoing:

A. Bidders are required to submit a MWBE Utilization Plan with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD.

B. ESD will review the submitted MWBE Utilization Plan and advise the Bidder of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the ESD Division of MWBD, 633 Third Avenue, 33rd Floor, New York, NY 10017, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on MWBE Utilization Plan. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. ESD may disqualify a Bidder as being non-responsive under the following circumstances:
   a) If a Bidder fails to submit a MWBE Utilization Plan;
   b) If a Bidder fails to submit a written remedy to a notice of deficiency;
   c) If a Bidder fails to submit a request for waiver; or
   d) If ESD determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the ESD Division of MWBD, 633 Third Avenue, 33rd Floor, New York, NY 10017 by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Attachment A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the ESD a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

Empire State Development

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

Form E4 (REVISED 2012/04)

M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Federal Employer Identification No. (FEIN):

Offeror's Name:

Offeror's Address:

City, State, Zip Code:

Telephone No.:

Region/Location of Work:

Solicitation No.:

Project No.:

M/WBE Goals in the Contract: MBE - % WBE - %

| 1. Certified M/WBE Subcontractors/Suppliers Federal Employer Identification Number (FEIN), Name, Address, Phone, Fax and Email Address. | 2. Classification | 3. Federal ID No. | 4. Detailed Description of Work (Attach additional sheets, if necessary) | 5. Dollar Value of Subcontracts / Supplies / Services and intended performance dates of each component of the contract. |
|---|---|---|---|---|
| A. | NYS ESD CERTIFIED<br>☐ MBE<br>☐ WBE | | | |
| B. | NYS ESD CERTIFIED<br>☐ MBE<br>☐ WBE | | | |

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A WAIVER REQUEST FORM (FORM E4).

Empire State Development

**Form E4** (REVISED 2012/04)

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

M/WBE UTILIZATION PLAN

PREPARED BY (Signature): _____ DATE:

Preparer's Name (Print or Type):

**Preparer's Title:**

**Date:**

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

| **TELEPHONE NO.:** | **EMAIL ADDRESS:** |
|---|---|

## ** FOR OCSD-M/WBE USE ONLY **

| REVIEWED BY: | DATE: |
|---|---|

**UTILIZATION PLAN APPROVED?**

☐ YES ☐ NO Date:

**Contract No.:**

**Project No. (if applicable):**

**Contract Award Date:**

Estimated Date of Completion:

Amount Obligated Under the Contract:

**Description of Work:**

**NOTICE OF DEFICIENCY ISSUED?**

☐ YES ☐ NO Date of Issue:

**NOTICE OF ACCEPTANCE ISSUED?**

☐ YES ☐ NO Date of Issue:

Empire State Development

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

**FORM E5** (REVISED 2012/04)

WAIVER REQUEST FORM

## Waiver Applicant

| | |
|---|---|
| Offeror / Contractor Name: | Fed ID No.: |
| Address: | Solicitation/Contract No.: |
| City, State, Zip Code: | M/WBE Goals:<br>MBE: ____ % WBE: ____ % |

**By submitting this form and the required information, the offeror / contractor certifies that every "Good Faith Effort" has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract. Review 5 NYCRR §142.8, Contractor's Good Faith Efforts, on page 2 of this form for the precise definition of "Good Faith Effort".**

**Contractor is requesting a:**

1. ☐ MBE Waiver – A waiver of the MBE Goal for this procurement is requested.
   ☐ Total ☐ Partial
2. ☐ WBE Waiver – A waiver of the WBE Goal for this procurement is requested.
   ☐ Total ☐ Partial
3. ☐ Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development).

   Date of such filing with Empire State Development Corporation: _____

PREPARED BY (Signature): _____ Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

| Name and Title of Preparer (Printed or Typed): | Telephone Number: | Email Address: |
|---|---|---|
| | | |

Submit with the bid or proposal or if submitting after award submit to:

**Empire State Development Corporation**
**Office of Contractor and Supplier Diversity**
**633 Third Avenue, 33rd Floor**
**New York, New York 10017**

******* FOR M/WBE USE ONLY *******

| REVIEWED BY: | DATE: |
|---|---|
| | |

Waiver Granted: ☐ YES MBE: ☐ WBE: ☐

☐ Total Waiver ☐ Partial Waiver

☐ ESD Certification Waiver ☐ *Conditional

☐ Notice of Deficiency Issued _____

* Comments:

**5 NYCRR §142.8 - Contractor's Good Faith Efforts**

(a) The contractor must document its good faith efforts toward meeting certified minority and women-owned business enterprise utilization plans by providing, at a minimum:

(1) Copies of its solicitations of certified minority and women-owned business enterprises and any responses thereto;

(2) If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;

(3) Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;

(4) Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses;

(5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;

(6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.

(b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:

(1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;

(2) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;

(3) The actions taken by the contractor to contact and assess the ability of certified minority and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;

(4) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;

(5) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions

Empire State Development

Form E6 (REVISED 04/2012)

# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

## M/WBE CONTRACTOR COMPLIANCE AND PAYMENT REPORT

PROJECT SPONSOR/DEVELOPER
(or "REPORTING COMPANY"):

FEDERAL EIN #:

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD/OCSD REPRESENTATIVE:

PROJECT NAME:

PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

**Attach M/WBE executed contracts, final lien waivers, cancelled checks, etc., or other documentation describing the "Good Faith Efforts" taken to achieve M/WBE program. This report should be completed and signed by an officer of the Reporting Company.**

| PRIME CONTRACTOR (Federal EIN #, Firm's Name, Address, Contact Person, Title and Phone # with area code) | CONTRACT AMOUNT | M/WBE SUBCONTRACTOR (Federal EIN #, Subcontractor Name, Address, Contact Person, Title and Phone # with area code) | SCOPE OF SERVICES | M/WBE CONTRACT AMOUNT | M/WBE PAYMENTS PREVIOUSLY REPORTED | M/WBE PAYMENTS ON CURRENT REPORT | TOTAL M/WBE PAYMENTS TO DATE |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

**CERTIFICATION: I, _____ (Print Name), the _____ (Title) of the Reporting Company above, do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.**

**SIGNATURE:** _____ **DATE:** _____

**SUBMIT REPORT TO:** OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
EMPIRE STATE DEVELOPMENT CORPORATION
633 THIRD AVENUE, 33rd FLOOR
NEW YORK, NY 10017

**Questions?** Please contact the Office of Contractor and Supplier Diversity (OCSD) Project Managers below:

**Vikas Gera**
Project Manager, OCSD
(212) 803-3244
vgera@esd.ny.gov

**Denise Ross**
Project Manager, OCSD
(212) 803-3226
dross@esd.ny.gov